

AMENDMENTS TO THE DRAWINGS

The attached sheet of drawings includes changes to Fig. 1.

Attachment: Replacement Sheet

REMARKS

Upon entry of this paper, claim 1 has been amended, claims 6 and 8-11 have been previously canceled, and no claims have been added as new claims. Thus, claims 1-5 and 7 are presently pending in this application. No new matter has been added.

Interview Summary

Applicants thank the Examiner for the telephone interview conducted on Wednesday, June 1, 2006. During the interview, Applicants and Examiner discussed the pending claims. It was agreed that if the claims were amended in accordance with the amendments provided herein, the amended claims would be allowable over the cited references. Accordingly, Applicants have provided the present amendment in an attempt to further prosecution and obtain a Notice of Allowability. The Examiner committed to reviewing the amended claim language to confirm its patentability over the cited references.

Drawings

A set of drawings in compliance with 37 CFR 1.121(d) were requested by the Examiner. Accordingly, Applicants are submitting Formal Drawings herewith. Applicants submit that the submission of Formal Drawings satisfies the requirements under the cited rules. If anything further is required with regard to the drawings in this case, Applicants respectfully request a telephone interview with the Examiner to discuss.

Claim Rejections Under 35 USC §112

Claim 1 was rejected under 35 USC §112, second paragraph, as being indefinite for being mis-descriptive by claiming a device “free of external moving operational elements”.

Applicants have amended claim 1 to express differently that which has been clearly claimed and described consistently throughout the pendency of this case in an effort to appease

the Examiner's request for different wording. Therefore, the amendment is not substantive and does not require an additional search.

Specifically, claim 1 has been amended to indicate that the cylindrically shaped housing is "free of externally accessible elements that require movement for operation" (*see* amended claim 1). Because the previous claim language of "free of external moving operational elements" has the same meaning as the revised claim language, and is wholly consistent with Remarks provided by Applicants in prior Replies, Applicants submit that no additional search is required.

Specifically, Applicants reiterate that the claim language "free of external moving operational elements" is in no way violated by a *fixed* sound tube extending from the housing. As has been previously remarked by Applicants, the interpretation of "external moving operational element" was distorted to mis-describe the described element (sound tube). It is clear from the specification on page 4, paragraph beginning at line 11, that "no movable external operating elements at all are provided in the treatment device . . . This approach facilitates sealing the treatment device, thereby enhancing the reliability of the treatment device and reducing its production costs." The sound tube is not an external moving operational element, and there are no other external moving operational elements.

The rotational force referred to in the Office Action can only be affiliated with one form of assembling the device, which is by the screw thread shown in the figure. However, Applicants submit that it is wholly improper to consider an assembly step when interpreting claims directed to the final assembled device. The final assembled device requires that the sound tube be fixed and not rotate. Under the same logic applied in the Office Action with regard to the sound tube, any collection of elements or components of a device that are positioned and rotated relative to each other during assembly and then glued, or welded, or otherwise locked or fastened into place to maintain a fixed structure would be considered to be "moving". This is simply an unsupportable interpretation of the device and the claims.

The claims must be interpreted in a manner that is not contradictory to the invention as described in the specification. Interpreting the sound tube 6 to be an external moving part that

moves with an applied rotational force operating to transmit sound is clearly not described or claimed in the present invention.

However, in an effort to further prosecution and obtain a Notice of Allowability, Applicants have provided the amendment herein to appease the Examiner's request for different wording. Therefore, Applicants submit that there is no mis-description of the invention with the claim language indicating a device "free of externally accessible elements that require movement for operation". Reconsideration and withdrawal of this rejection is requested.

Claim Rejections Under 35 USC §103

Claims 1 and 7

Claims 1 and 7 were rejected under 35 USC §103 as being unpatentable over Reiter, et al. in view of Gnecco and in further view of Giannetti. This rejection is respectfully traversed in view of the following remarks.

As previously stated, Reiter fails to teach or suggest a treatment device being "free of external moving operational elements" (*see previous* claim 1). Accordingly, Reiter also fails to teach or suggest a treatment device being "free of externally accessible elements that require movement for operation" (*see amended* claim 1). As previously stated and remarked by Applicants during the telephone interview, "external" means "capable of being perceived outwardly; superficial; of, relating to, or connected with the outside or an outer part; and/or situated near or toward the surface of the body" (*see Merriam Webster's Collegiate Dictionary, 10th Edition, 1997*). Clearly, the screw of Reiter is "near the surface of the body" and is "of, relating to, or connected with the outside or an outer part" of the device, and thus qualifies as an "external moving operational element". However, as previously stated, Applicants have modified the wording of claim 1 in accordance with the Examiner's request, to indicate that the device must be "free of externally accessible elements that require movement for operation". The screw depicted in the one embodiment of Reiter relied upon by the Examiner is clearly "externally accessible" and requires "movement for operation". As such, Reiter alone or in combination, fails to teach or suggest all claimed elements of the present invention.

Since the Examiner has agreed during the telephone interview that the modified claim language is patentable over Reiter, both separately and in combination with one or more of Gnecco and Giannetti, Applicants submit that both the previous claims and the presently amended claims are in condition for Allowance. Reconsideration and withdrawal of this rejection are respectfully requested.

Claims 2, 3, 4, 5

Claims 2 and 5 were rejected under 35 U.S.C. 103(a) as being unpatentable over Reiter et al. US 5,724,431 in view of Gnecco US 5,640,457 in view of Giannetti US 5,675,657, as applied to claim 1, and further in view of Narisawa US 6,041,128. Claim 3 was rejected under 35 U.S.C. 103(a) as being unpatentable over Reiter et al. US 5,724,431 in view of Gnecco US 5,640,457 and in further view of Giannetti US 5,675,657, as applied to claim 1, and in further view of Meier US 6,574,343. Claim 4 was rejected under 35 U.S.C. 103(a) as being unpatentable over Reiter et al. US 5,724,431 in view of Gnecco US 5,640,457, in view of Giannetti US 5,675,657, in view of Narisawa US 6,041,128, as applied to claim 2, and further in view of Meier US 6,574,343.

None of the cited references, or their corresponding combinations as cited in the above rejections addresses the inability of Reiter to teach, suggest, or disclose an auditory treatment device having a housing that is, “free of external moving operational elements” (see previous claim 1) as required by the present invention, or a device “free of externally accessible elements that require movement for operation” (see amended claim 1). Absent such a teaching or suggestion, there can be no obvious rejection. Accordingly, Applicants respectfully request reconsideration and withdrawal of these rejections.

Applicants respectfully submit that unless a *prima facie* case of unpatentability with respect to known facts is established, applicants are not obliged to proffer any evidence of nonobviousness. To establish a *prima facie* case there must be some suggestion or motivation, either in the prior art or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine multiple reference teachings. There must then be a

reasonable expectation of success. Finally, the prior art reference or references (when combined) must teach or suggest all the claimed limitations. The prior art reference or references (when combined) as applied in the most recent Office Action do not teach or suggest all the claimed limitations of the pending claims.

CONCLUSION

In view of the foregoing, it is respectfully submitted that this application is now in condition for allowance. Applicants courteously solicit allowance of the claims in the form of a Notice of Allowance.

Specifically, each of Applicants' claims contains characteristics that are neither disclosed nor suggested by the cited documents. For the reasons detailed herein, Applicants respectfully request that all rejections be reconsidered and withdrawn. This application is in condition for allowance, and notice of the same is earnestly solicited. Should the examiner have any questions, comments, or suggestions in furtherance of the prosecution of this application, the examiner is invited to contact Applicants' representative by telephone at the number indicated below.

Please charge any shortage or credit any overpayment of fees to our Deposit Account No. 12-0080 under the billing code HHI-033US. In the event that a petition for an extension of time is required to be submitted herewith, and the requisite petition does not accompany this response, the undersigned hereby petitions under 37 C.F.R. §1.136(a) for an extension of time for as many months as are required to render this submission timely. Any fee due is authorized to be charged to the aforementioned Deposit Account

Dated: June 12, 2006

Respectfully submitted,

By 

Sean D. Detweiler

Registration No.: 42,482

LAHIVE & COCKFIELD, LLP

28 State Street

Boston, Massachusetts 02109

(617) 227-7400

(617) 742-4214 (Fax)

Attorney/Agent For Applicant